

Decision 01-08-019 August 2, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Own Motion into Competition for Local Exchange
Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's
Own Motion into Competition for Local Exchange
Service.

Investigation 95-04-044
(Filed April 26, 1995)

O P I N I O N**I. Introduction**

We hereby find Sprint Spectrum L.P., as agent for Cox Communications PCS¹ doing business as Sprint PCS (Sprint PCS) to be in violation of Rule 1 of the Commission's Rules of Practice and Procedure, and consequently, impose penalties of \$200,000 as provided for in the Public Utilities Code. Rule 1 of the Commission's Rules of Practice and Procedure states:

"Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law

¹ In separately filed comments, Cox California Telecom, LLC (dba Cox Communications) affirmed that since May 17, 1999, Cox Communications Incorporated, parent company of Cox California Telecom, no longer holds any ownership interest in Cox Communications PCS. Accordingly, none of the references to Cox Communications PCS or to Sprint PCS in this order are in any way intended to implicate or be identified with Cox Communications Incorporated or Cox California Telecom.

Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

Our authority to impose penalties for Sprint PCS' violations of Rule 1 is provided for in Public Utilities Code Section 701, which states that the Commission is "empowered to supervise and regulate every public utility in the State and may do all things . . . which are necessary and convenient in the exercise of such power and jurisdiction." (See also, Calif. Constitution, Article 12, Sec. 6.) The Commission is required by law to ensure that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered and collected. (Pub. Util. Code, § 2101.)

Moreover, the Public Utilities Code further provides that:

"Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars..., nor more than twenty thousand dollars ... for each offense." (Id., Sec. 2107.)

Even though the Commission does not regulate wireless carriers such as Sprint PCS with respect to rates or entry, Sprint PCS still comes under our jurisdiction as a public utility to the extent that we have delegated authority over area code relief and related number allocation measures. (See FCC Orders adopted September 15, 1999 FCC 99-48; CC Docket No. 96-98.)

The specific action for which Sprint PCS is found to be in violation of Rule 1 relates to representations and omissions made to the Commission's Telecommunications Division (TD) staff in connection with Sprint PCS' request for numbering resources in the 310 Numbering Plan Area (NPA). In providing data responses to TD staff concerning

number utilization, Sprint PCS failed to disclose relevant information regarding NXX codes that it possessed in the Culver City and Inglewood Rate Centers.

In view of Sprint PCS' failure to disclose this information in its data response, an Administrative Law Judge (ALJ) Ruling was issued on December 5, 2000. In the Ruling, Sprint PCS was ordered to show cause as to why it should not be found in violation of Rule 1 due to its failure to disclose this information to TD staff. In the event that it was found in violation of Rule 1, Sprint PCS was also to show cause why it should not be liable for penalties and sanctions.

On December 20, 2000, Sprint PCS filed a response to the ruling denying any Rule 1 violation, and objecting to imposition of penalties or sanctions. In support of its position, Sprint PCS attached a copy of its request for NXX codes and a notarized affidavit of Scott Ludwikowski, a Senior Network Engineer employed by Sprint PCS. Mr. Ludwikowski attested that the omission of responsive information to Commission staff was due to unintentional error and due to differences in interpretation regarding the intent of the data request.

A response to the ALJ Ruling was also filed by Cox California Telcom, L.L.C. dba Cox Communications (Cox). Cox takes no position on the merits of the Commission's inquiry as set forth in the ALJ Ruling. Cox expresses concern, however, that some confusion may exist regarding the relationship--or lack thereof--between Sprint PCS and Cox Communications, Inc., a parent company of Cox California Telecom. Cox is concerned that such confusion could erroneously color the Commission's opinion of Cox's veracity before the Commission. Cox states that no legal relationship exists between Cox or its parent companies and Sprint Spectrum L.P. which does business as both Sprint PCS and Cox Communications PCS. Cox attached to its pleading the "Declaration of Carrington Phillip," Vice President of Regulatory Affairs for CCI.

Phillip explains that neither Cox affiliates nor parent have had any ownership interest in Cox Communications PCS since May 17, 1999, even though Sprint Spectrum continues legally operating under the name Cox Communications PCS as allowed under a

prior partnership agreement. Cox offers these facts so that the Commission will be clear concerning which entity is responsible for the actions of Sprint PCS.

In view of Cox's statements, we affirm that none of the references to Cox Communications PCS or to Sprint PCS in this order are in any way intended to implicate or be identified with Cox Communications Incorporated or Cox California Telecom.

II. Statement of the Facts

As a basis to evaluate whether a Rule 1 violation occurred, we review the sequence of events at issue in the order to show cause.

On May 5, 2000, Sprint PCS filed an "Emergency Petition" in the Local Competition rulemaking to obtain a growth NXX code in the Beverly Hills Rate Center in the 310 NPA outside of the lottery process. Sprint PCS subsequently withdrew its formal petition and submitted instead a letter to the Director of Telecommunications Division (TD) dated May 18, 2000, informally seeking the same authority to obtain an NXX code.

In order to evaluate Sprint PCS' request for a growth NXX code, the TD staff undertook discovery concerning how many numbers Sprint PCS already held in other rate centers in the Beverly Hills local calling area. Such inquiry was necessary in light of Sprint PCS' claim that an NXX code in the Beverly Hills rate center was needed so that callers using landline telecommunications services could dial a local number in calling mobile customers of Sprint PCS, and thereby avoid landline toll charges.²

TD thus submitted a data request to Sprint PCS on June 2, 2000 (attached as Appendix A, hereto), asking for its utilization data as of May 31, 2000 for all rate centers

² Some of the rate centers included in the 310 area code fall outside the Beverly Hills local calling area, while rate centers in neighboring area codes are included in the Beverly Hills local calling area. Thus, a customer living in Beverly Hills may dial numbers within the Beverly Hills local calling area which will terminate at rate centers in three other area codes, and the customer will incur no toll charges. That same Beverly Hills customer may call a number associated with one of several rate centers located in the 310 area code but which are outside the Beverly Hills local calling area, and the customer will incur toll charges for those calls. Thus, the area code boundary is not dispositive of whether a caller to a Sprint PCS' customer will pay toll charges; rather, the scope of the caller's local calling area boundary dictates whether toll charges will apply to a particular call.

in the 310 NPA as well as for the 213 and 818 NPAs. On June 9, 2000, Sprint PCS produced a response to the June 2 data request. Upon review of the response, TD staff determined that Sprint PCS had failed to provide requested information pertaining to number holdings in several rate centers. Rather, Sprint PCS simply responded that the rate centers had been misidentified in staff's June 2 data request as being in the 213 area code when, in fact, those particular rate centers were in the 323 area code. While pointing out the staff's error, Sprint PCS nonetheless did not produce any utilization data for those rate centers in its response.

On June 14, 2000, TD transmitted a second data request to Sprint PCS (attached as Appendix C, hereto). To ensure that Sprint PCS could not misinterpret the request for information regarding the numbers Sprint PCS held in all rate centers within the local calling area of Beverly Hills, the data request listed each rate center in the 213, 323, and 818 area codes for which TD was requesting data. The data request also asked for clarification regarding an apparent anomaly in the data Sprint PCS had provided to the Commission on June 9, 2000. On June 21, 2000, Sprint PCS submitted its response to the June 14th data request.

In evaluating Sprint PCS' data responses to the Commission, TD was unaware that Sprint PCS had obtained additional prefixes between December, 1999 and June, 2000. Since the North American Numbering Plan Administrator (NANPA) actually assigns prefixes to carriers, the Commission does not routinely monitor when and where carriers obtain prefixes. The TD staff only became aware that Sprint PCS had obtained additional prefixes in the 310 NPA through reviewing an affidavit filed by Sprint PCS in a legal action brought by Sprint PCS against the Commission in U.S. District Court.³

Only by reading the Affidavit of Scott Ludwikowski, filed in that federal action, did TD learn that Sprint PCS had obtained additional prefixes in the 310 area code.

³ See Cox Communications PCS, LP vs. California Public Utilities Commission in U.S. District Court for the Southern District of California; Case No. 00-cv 1364-IEG (ABJ)

Information regarding such additional prefixes had not been disclosed in the data Sprint PCS submitted to the Commission on June 9, 2000 or on June 21, 2000. In his Affidavit filed in the federal action, Mr. Ludwikowski makes the following statement:

"Within the last couple of months, Sprint PCS acquired initial NXX codes in the lottery for the Culver City and West Los Angeles rate centers. The acquisition of these codes will better avoid land-to-mobile toll charges for mobile customers living or working in those areas." (Ludwikowski Aff., at 32.)

TD notes, however, that Sprint PCS had, in fact, obtained the following prefixes in the 310 area code beginning in December, 1999, not all "within the last couple of months":

- (a) In December, 1999, Sprint PCS received an initial prefix in the 310 area code, which Sprint PCS elected to assign to the Culver City rate center, immediately adjacent to the Beverly Hills rate center.
- (b) In April, 2000, Sprint PCS received an initial prefix in the 310 area code, which Sprint PCS elected to place in the Inglewood rate center, within the Beverly Hills local calling area.
- (c) In June, 2000, Sprint PCS received an initial prefix in the 310 area code, which Sprint PCS elected to place in the West Los Angeles rate center, within the Beverly Hills local calling area.

Thus, Sprint PCS obtained the prefix that it assigned to the Culver City rate center in December, 1999, and Sprint PCS could begin assigning numbers to its customers from that prefix in February, 2000. Similarly, Sprint PCS obtained the prefix that it assigned to the Inglewood rate center in April, 2000. Both of these prefixes were in Sprint PCS' inventory of numbers on the date that Sprint PCS submitted its data to the Commission. Yet, Sprint PCS failed to include these prefixes in its data responses to TD, even though these prefixes represent an additional twenty thousand numbers Sprint PCS holds in the 310 area code. Further, both of these prefixes fall within the local calling area for Beverly Hills. Of all the prefixes in the 310 area code where Sprint PCS holds numbers,

the Culver City rate center, located only three miles to the south, is among the closest to Beverly Hills.

III. Response of Sprint PCS

While Sprint PCS acknowledges that it made an error in its response to the Staff's discovery request, it denies that the error was intentional. Sprint PCS argues that the Commission rules require that a person knowingly provide false or misleading information to constitute a violation of Rule 1, and that Sprint PCS' mistakes were unintentional. Sprint PCS therefore denies it violated Rule 1.

Sprint PCS' defense for not disclosing the Inglewood NXX code to staff is that the NXX code was not yet available for assignment to customers at the date of the staff data request. Sprint PCS claims it did not interpret the staff data request to include NXX codes that were not yet available for assignment at the date of the request.

As its defense for omission of the Culver City NXX code, Sprint PCS argues that its omission was unintentional. In support of this claim, Sprint PCS notes that it subsequently provided the omitted information to the Director of TD in a letter dated July 18, 2000 (attached as Appendix D, hereto) in response to a different request made in another context. As such, Sprint PCS claims an unintentional omission of pertinent information does not rise to the level of a Rule 1 violation, but is merely "excusable error."

IV. Discussion

A. Was Rule 1 Violated?

There are two questions to be resolved. First, we must determine whether Sprint PCS' actions constitute violation of Rule 1. Second, we must determine what sanctions or penalties should be imposed in the event that Rule 1 violation was violated.

There is no dispute that Sprint PCS failed to disclose the information on the two NXX codes sought by the staff in discovery. The question is whether Sprint PCS' actions in connection with these omissions constitute a Rule 1 violation. Sprint PCS' major argument is that the omission was purely unintentional and as such, does not

qualify as a Rule 1 violation. Sprint PCS argues that if it had intended to deceive the staff, it would not have made the information available in other contexts, for example, in the above-referenced response to the Director of TD.

Even to the extent we were to presume that Sprint PCS did not intentionally set out to deceive the staff, the results of its actions did have the effect of misleading the staff.

Sprint PCS argues, for example, that it did not conceal the fact that it possessed the Culver City NXX because the assignment of every NXX code in America, including the Culver City NXX, is published in the Local Exchange Routing Guide (LERG) which is a public document. Yet, the Commission does not routinely monitor when and where carriers obtain prefixes, since it is NANPA's responsibility to assign prefixes to carriers. The staff thus does not routinely crosscheck data received at different times for different purposes to confirm that a carrier is telling the truth.

Further, the data response Sprint PCS submitted was directed to the supervisor of the numbering team in TD. The subsequent letter to which Sprint refers, in which it disclosed possession of the Culver City NXX codes, was sent to the Director of TD, and ultimately referred to a staff person not working on the Sprint PCS emergency code request. The two requests for information were unrelated, and the staff person assigned to the Sprint PCS emergency code request could not reasonably be expected to search throughout the division for other sources of Sprint PCS data that might be different from the information Sprint provided in the data response. Finally, the information Sprint PCS disclosed its possession of the Culver City prefix one month after it submitted the data response to TD, thus excluding the existence of that code from the staff's evaluation of the emergency request.

Merely because a party initially withholds information from the staff for a particular purpose and then later discloses the information in some different or unrelated context(s) does not necessarily mean that the initial nondisclosure was purely unintentional. The timing or manner in which information is disclosed could potentially

have a material effect on the outcome desired by the disclosing party. If a party is able to simply claim ignorance of the initial omission, the party would benefit from the initial nondisclosure and escape any sanctions or penalties.

In any event, the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation. We address this question further in the section below dealing with the size of the penalty to be assessed.

In the case of its Inglewood NXX code, the reason Sprint PCS offers for not making disclosure was that Sprint PCS did not interpret the data request to be seeking this information. Sprint PCS quotes pertinent language from the request asking for: "...Sprint PCS' utilization data as of May 31, 2000 for all rate centers in the 310 NPA...." Sprint PCS claims it interpreted this wording as limited in scope only to codes that were currently available for assignment to customers. The numbers in the Inglewood rate center were not effective and available for assignment to customers until mid-June 2000. Sprint PCS claims that in conformity with its national reporting policy, utilization reporting is based on effective NXX codes, not on assignment of the code to the carrier.

We find Sprint PCS' explanation for not disclosing the Inglewood NXX in its data response to be unsatisfactory. Sprint PCS' purported interpretation of the staff's data request is unduly narrow. The intent of the staff's data request was to gain a comprehensive picture of how Sprint PCS was utilizing the numbering resources within its possession in the identified rate centers as a basis to evaluate its need for new numbers going forward in time. Utilization is a function of the quantity of numbers assigned to customers in relation to numbering resources within the possession of the carrier. Clearly, the Inglewood NXX code information was within Sprint PCS' possession at the time of the data response even though actual assignments of numbers from the NXX would not become effective until somewhat later. Therefore, Sprint PCS should have identified the Inglewood NXX in order to provide a complete picture of numbering resources in response to the staff request.

Sprint PCS further claims that it believed the Commission already knew that Sprint PCS possessed the Inglewood NXX code in any event because the Commission conducted the lottery granting this code to Sprint PCS. We find this argument unpersuasive as well. Sprint PCS had no basis to presume how Commission staff may or may not apprehend, retain, relay, or crosscheck information gleaned from processing the lottery for other independent data gathering purposes. No party should not take it upon itself to selectively edit responses to staff data requests based on its own presumptions about what the staff may or may not already know from other independent sources. We therefore conclude that failure to disclose numbers in the Inglewood NXX constitutes violations under Rule 1.

We have a similar reaction with respect to the Culver City NXX code. Even though the omitted information concerning the Culver City NXX code was subsequently disclosed to the Director of TD, for example, the disclosure was in a different context that was not responsive to the original staff data request. It is not obvious that the staff handling the Sprint PCS request for codes would necessarily cross check data received from unrelated sources to become aware that previously omitted NXX data had now been provided through some unrelated process.

Finally, we note the significant of the existence of the Culver City and Inglewood codes in the staff's analysis of the emergency code request. The letter denying the code request explained the staff's rejection of Sprint PCS' argument that it could not assign customers numbers in Beverly Hills numbers assigned to adjacent rate centers. The letter explains at some length the staff's belief that the CPUC is not required to afford callers to wireless customers a local calling scope identical to customers of wireline carriers serving the same rate center. Given the importance TD staff attached to Sprint PCS' number holdings in adjacent rate centers, the omission from the data response of information pertaining to the Culver City and Inglewood NXX codes was critical.

In view of its failure to disclose the NXX codes possessed in the Culver City and Inglewood Rate Centers in its response to the TD staff's data requests, we therefore find that Sprint PCS is in violation of Rule 1. Accordingly, we impose penalties as follows:

B. Assessment of Sanctions and Penalties

Decision (D.) 98-12-075, and Public Utilities Code Sections 2107 - 2108, provide guidance on the application of punitive fines.⁴ As stated in D.98-12-075, two general factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the utility. In addition, the Commission considers the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent. (D.98-12-075, mimeo., pp. 34-39.)⁵

A sanction may be a warning. Alternatively, a sanction might be a fine that is suspended based upon the condition that certain events are fulfilled (e.g., no additional Rule 1 violations within a specific number of months). A fine might be a penalty of not less than \$500, nor more than \$20,000, for each offense, with every day of a continuing offense a separate and distinct offense. (Public Utilities Code Sections 2107 and 2108.)

Section 2111 of the Public Utilities Code provides for fines and penalties on "every corporation or person, *other than a public utility and its officers, agents, or employees*, which knowingly violates or fails to comply with...any part of any order, decision, rule, direction, demand, or requirement of the commission..." Thus, under

⁴ D.98-12-075 indicates that the principles therein distill the essence of numerous Commission decisions concerning penalties in a wide range of cases, and the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. (Mimeo., pp. 34-35.)

⁵ In deciding the amount of a penalty, the Commission also considers the sophistication, experience and size of the utility; the number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense. (See D.98-12-076, mimeo., pp. 20-21.) These principles are distilled into those identified in D.98-12-075.

this provision of the code, the Commission has authority to impose monetary penalties on any party that makes false representations to the Commission in violation of Rule 1, whether or not they are a regulated utility.

The Commission also may consider sanctions that may be available as a result of the delegated authority from the Federal Communications Commission (FCC) to engage in area code planning and implementation, as well as to implement number conservation measures within California. Sprint PCS is subject to the rules and requirements of this Commission in order to obtain numbering resources within California. Since we are imposing a monetary penalty, we shall not impose further sanctions on Sprint PCS at this time.

To determine the size of the penalty for Sprint PCS' Rule 1 violation, we shall thus rely on the criteria adopted by the Commission in D.98-12-075 as discussed below. Based on the application of these criteria as discussed below, we conclude that a penalty of \$10,000 per violation is appropriate here. In terms of the size of the penalty per offense, an element of discretionary judgment is involved. In view of the severity of the offense, conduct of the utility, financial resources, and prior precedent, we conclude that the amount of the penalty per offense should be set in the middle of the allowable range.

In accordance with Section 2108, we shall apply the \$10,000 penalty per violation to each separate offense committed by Sprint PCS. Under Public Utilities Code Section 2108, "every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense."

We shall measure the number of offenses at issue here in terms of each separate data element that Sprint PCS failed to disclose in its data response. Since the staff data request for disclosure of Sprint PCS' numbering resources asked for the data in incremental blocks of 1,000 numbers as discrete elements, the failure to provide information on each incremental block of 1,000 numbers shall constitute a separate

violation. The two NXX codes in question were comprised of 20,000 individual numbers (i.e., 10,000 numbers for each NXX code), resulting in 20 separate offenses (i.e., 20,000 numbers divided by 1,000 block increments equals 20). The resulting penalty is \$200,000 (i.e., \$10,000 per offense times 20 offenses).

We address the criteria from D.98-12-075 that we rely upon to assess this penalty as explained below.

1. Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors⁶:

Physical harm: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.

Economic harm: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.

Harm to the Regulatory Process: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.

The number and scope of the violations: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.

⁶ 1998 Cal. PUC LEXIS 1016, *71 - *73.

Sprint PCS' violation of Rule 1, while serious, did not cause any physical or economic harm to others. In addition, there is no evidence that Sprint PCS significantly benefited from its conduct. Yet, although the violation may have affected few, if any, consumers, it had the potential to deprive other carriers' customers of numbers. The factor that most clearly indicates the violation should be considered a grave offense, however, is our general policy of according a high level of severity to any violation that harms or undermines the regulatory process. This factor must be weighed against the other factors in evaluating the severity of the offense.

We conclude that Sprint PCS' conduct harmed the regulatory process by failing to report material information in response to a staff data request. In this instance, the staff was carrying out its regulatory duties to ensure that scarce numbering resources were properly allocated based upon legitimate need. Without true and complete responses to the data request, the staff's ability to properly assess and act upon Sprint PCS' request for codes was undermined.

2. Criterion 2: Conduct of the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider the following factors⁷:

The Utility's Actions to Prevent a Violation: Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.

The Utility's Actions to Detect a Violation: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's

⁷ 1998 Cal. PUC LEXIS 1016, *73 - *75.

involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.

The Utility's Actions to Disclose and Rectify a Violation:

Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

In its pleading, Sprint PCS fails to discuss any company rules or processes that it applied to check or confirm the accuracy and completeness of data responses before they were released to the Commission.⁸ Sprint PCS simply dismisses its own conduct as "excusable neglect." Without any justification as to why company management allowed such neglect to go unchecked, we decline to excuse such neglect.

Sprint PCS also argues that it should not be subject to any penalty because its error was not intentional, and that the company did not set out to mislead the staff. However, the extent to which we assume Sprint PCS' violation was not intentional goes to the weight assigned to the size of any penalty--not to whether or not a violation of Commission rules occurred. Even if a violation may not have been willfully intentional, Sprint PCS still should have made a more concerted effort to verify the accuracy and integrity of the data response prior to its release to Commission staff. A carrier should not avoid responsibility for the truthfulness of its representations to the Commission

⁸ In comments to the draft decision, Sprint PCS noted that it is in the process of improving its number management systems so as to reduce the possibility of errors or omissions that will be made in the future. Specifically, Sprint PCS notes that staff recommended in its February 2001 310 audit report that "Sprint should automate the entire TN reporting system to eliminate the potential for human error in its reports." Sprint PCS agrees with this recommendation, and has begun the process of automating its systems to generate Numbering Resource Utilization and Forecasting (NRUF) Reports and minimize much of the potential for human error in reporting of data.

simply by neglecting to verify the completeness of material statements made by its employees or agents before releasing them to staff.

In this instance, not only did Sprint PCS fail to provide complete information to the staff initially, but the company never brought the nondisclosure to the Commission's attention. Commission staff involved in the Sprint PCS matter did not actually learn of the additional NXX codes until confronted with it in an adversarial court proceeding aimed at legally challenging the Commission's action in denying NXX codes to Sprint PCS. The fact that Sprint PCS disclosed existence of the Culver City NXX code to the Director of TD in response to an unrelated inquiry was not a means of bringing to the assigned staff the omission from the data response. Even though Sprint PCS did not ultimately prevail in its action before the court, the Commission staff was still disadvantaged by not receiving the omitted information earlier. By not being previously apprised of this information prior to the court proceeding, the Commission's perceived credibility and ability to prepare its own case before the court was potentially undermined.

Although theoretically, the staff might have discovered the existence of the additional codes earlier through, for example, Sprint PCS' response to the TD Director or by checking the LERG, such discovery would have been incidental and not as a result of the direct request to Sprint PCS. The relevant point, however, is that staff must be able to rely upon the representations made to it in response to data requests in order to carry out its duties of protecting the public interest effectively. Whether the requested information may be independently available from other sources of which staff may or may not be aware does not relieve a party from its Rule 1 obligations. Sprint PCS was required to provide truthful and complete answers to the data requests propounded and to exercise due professional care to ensure the integrity of information transmitted to the Commission and its staff.

The staff was forced to discover the discrepancy for itself only after reading the affidavit of a company representative in a separate legal proceeding. Moreover,

Sprint PCS fails to indicate in its pleading any measures or planned improvements in its internal procedures to assure that more instances of incomplete or inaccurate data responses or reporting do not occur again.

Thus, based upon the criteria relating to conduct of the utility, these failures on the part of Sprint PCS weigh in favor of imposing a greater penalty.

3. Criterion 3: Financial Resources of the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the following factors⁹:

Need for Deterrence: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.

Constitutional limitations on excessive fines: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

We conclude that the fine we establish of \$200,000 is significant enough to serve as an incentive to deter future violations. Yet, the amount of the fine is conservative enough not to be excessive in view of the financial resources available to Sprint PCS which is owned by Sprint Spectrum L.P., a major telecommunications carrier within California, with assets in billions of dollars.

4. Criterion 4: Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors¹⁰:

⁹ 1998 Cal. PUC LEXIS 1016, *75 - *76.

The degree of wrongdoing: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

The public interest: In all cases, the harm will be evaluated from the perspective of the public interest.

Sprint PCS does not appear to have materially benefited from its conduct. Although they did attempt to obtain a scarce numbering resource that could have benefited them had they succeeded. From the broader perspective of the public interest, however, it is essential that the staff have access to true and complete information from carriers in order to carry out Commission responsibilities regarding the efficient utilization of numbering resources. Sprint PCS violation acted to impede the staff from exercising its obligations to protect the public interest. In considering the totality of circumstances and degree of wrongdoing in this case, we conclude that a penalty within the middle of the allowable range is appropriate.

5. Criterion 5: The Role of Precedent

In D.98-12-075, the Commission held that any decision that imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.¹¹

As precedent for considering the level of fines against Sprint PCS, we consider past Commission decisions involving Rule 1 violations and assessment of penalties. For example, in D.98-03-073, fines were imposed on Southern California Edison (Edison) relating to its failure to comply with its discovery obligations. In that decision, we required Edison to make restitution to the State of California for the Commission expenses incurred in conducting Law and Motion hearings and all other

¹⁰ 1998 Cal. PUC LEXIS 1016, *76.

¹¹ 1998 Cal. PUC LEXIS 1016, *77.

costs related to addressing Edison's failure to comply with its discovery obligations in the amount of \$10,000. Edison was also required to reimburse other parties for their expenses in litigating the discovery dispute in the amount of \$38,495.

In D.99-06-051, we considered a range of penalties against Roseville Telephone Company for a pattern of behavior in misleading the Commission in violation of Rule 1. In that proceeding, the ALJ's draft decision had proposed a fine of \$78,500. Due to the additional passage of time from the issuance of the ALJ's draft decision to the final Commission decision, the amount of the fine would have grown to \$113,500. We also noted that \$49,000 was a possible alternative amount for a fine, based upon the minimum permissible statutory penalty of \$500 per day for a total of 98 days during which time Roseville misled the Commission. Ultimately, in view of evidence that Roseville had corrected its earlier pattern of behavior, the Commission only issued a warning to Roseville not to repeat such behavior, but declined to impose a fine. Nonetheless, we concluded in D.99-06-051 that imposing the fine as proposed by the ALJ would not necessarily have been unreasonable.

We conclude that the \$10,000 per offense standard we adopt for Sprint PCS is within the general parameters we have applied in prior situations such as the two instances noted above. In comparing Sprint PCS' offenses to those of other utilities, we take into account the importance of complete and truthful reporting of data as it relates to number resource utilization. Particularly given the increasingly critical nature of area code planing issues in recent years, it has become vitally important to ensure that numbering data is reported to the Commission accurately and completely so that numbering resources can be allocated efficiently. In this case, therefore, it is justifiable to impose a fine sufficiently large to send the proper message regarding the importance of number reporting integrity. The \$200,000 fine accomplishes this purpose. By adopting a penalty of \$10,000 per offense, we select a measure in the middle of the permissible range of \$500 to \$20,000 per offense as provided for by statute. By applying the penalty to each separate offense, the total penalty of \$200,000 is large enough to be

consequential. We conclude that a penalty of \$200,000 is appropriate in view of the particular circumstances involved in this instance.

V. Comments on Draft Decision

The draft decision of ALJ Thomas R. Pulsifer in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by Sprint PCS on May 29, 2001. We have taken the comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. On May 5, 2000, Sprint PCS filed an “Emergency Petition” in the Local Competition rulemaking to obtain a growth NXX code in the Beverly Hills Rate Center in the 310 NPA. Sprint PCS subsequently withdrew its formal petition and submitted instead a letter to the Director of TD dated May 18, 2000, informally seeking the same authority to obtain an NXX code.

2. In order to evaluate Sprint PCS' request for a growth NXX code, the TD staff undertook discovery concerning how many numbers Sprint PCS already held in other rate centers in the Beverly Hills local calling area.

3. Staff submitted a request for information regarding the numbers Sprint PCS held in all rate centers within the local calling area of Beverly Hills, specifically requesting data for each rate center in the 213, 323, and 818 area codes (see Appendix A and Appendix C, hereto).

4. Sprint PCS obtained an NXX code for the Culver City rate center in December, 1999, and was able to begin assigning numbers to its customers from that prefix in February, 2000.

5. Although Sprint PCS provided information by letter to the Director of Telecommunications Division regarding the Culver City NXX (attached as Appendix D, hereto), that information was provided in a completely independent context from the staff data request at issue in this proceeding, and was not responsive to that request.

6. Sprint PCS obtained an NXX code assigned to the Inglewood rate center in April, 2000.

7. Although both the Culver City and Inglewood NXX prefixes were in Sprint PCS' possession on the date that Sprint PCS submitted its data response to the CPUC, Sprint PCS failed to include these prefixes in its data responses to TD.

8. Given the importance TD staff attached to Sprint PCS number holdings in adjacent rate centers, the omission from the data responses of information pertaining to the Culver City and Inglewood NXX codes was critical.

9. A total monetary penalty of \$200,000 results from the mathematical application of the formula based upon a \$10,000 per violation assessment applied to 20 separate violations.

10. Since the staff data request for disclosure of Sprint PCS' numbering resources asked for the data in incremental 1,000-number blocks as discrete elements, the failure to provide information on each incremental block of 1,000 numbers constitutes a separate violation.

11. The two NXX codes at issue in the staff data request comprised 20,000 individual numbers (i.e., 10,000 numbers for each NXX code), resulting in 20 separate violations for purposes of assessing a penalty.

Conclusions of Law

1. Pursuant to Rule 1, any person that transacts business with the Commission agrees never to mislead the Commission or its staff by an artifice or false statement of fact or law.

2. The actions of Sprint PCS in not disclosing relevant information concerning NXX codes in its possession in the Culver City and Inglewood rate centers caused the Commission staff to be misled, and thereby constitutes a violation of Rule 1.

3. Pub. Util Code § 2107 provides for a penalty between \$500 and \$20,000 for each offense of a public utility which fails to comply with any order, decree, rule, direction, demand, or requirement of this Commission.

4. Sprint PCS should be subject to penalties as set forth below as a result of its Rule 1 violation as found herein.

5. For purposes of quantifying the number of offenses involved, each failure to respond to the separate elements of the staff's data request should be treated as a single offense.

6. Since staff requested for disclosure of Sprint PCS' numbering resources in incremental blocks of 1,000 numbers as discrete elements, the failure to provide information on each incremental block of 1,000 numbers for the Culver City and Inglewood NXX codes constitutes a separate offense for a total of 20 offenses (i.e., $20,000/1,000 = 20$).

7. A penalty of \$10,000 per offense represents the middle of the range of penalties provided for under Pub. Util. Code § 2107.

8. The application of the criteria in D.98-12-075 to the facts in this case indicates that Sprint PCS should pay a fine of \$200,000 for violating Rule 1 based on a penalty of \$10,000 per violation multiplied by 20 separate violations.

9. None of the references to Cox Communications PCS or to Sprint PCS in this order are in any way intended to implicate or be identified with Cox Communications Incorporated or Cox California Telecom.

O R D E R

IT IS ORDERED that:

1. Sprint Spectrum L.P. (Sprint PCS) is hereby found to be in violation of Rule 1 of the Commission's Rules of Practice and Procedure, and subject to the penalties as ordered below.

2. Sprint PCS is ordered to pay a fine in the amount of \$200,000 for violation of Rule 1 in accordance with the findings and conclusions set forth above. Sprint PCS shall pay the fine within 20 days from the effective date of this order by tendering to the Fiscal Office of the Commission a check in the amount of \$200,000 made payable to the State of California General Fund. Applicants shall file proof of payment at the Commission's Docket Office within 40 days of payment.

This order is effective today.

Dated August 2, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

Commissioner Henry M. Duque, being
necessarily absent, did not participate.

APPENDIX A

June 2, 2000 Data Request sent by
Telecommunications Division Staff in Response to
Sprint PCS Request For Assignment of a 310 NXX
Outside the Lottery Procedures

STATE OF CALIFORNIA

GRAY DAVIS, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 2, 2000

Mr. Jeffrey M. Pfaff

Sprint PCS

4900 Main, 11th Floor

Kansas City, MO 64112

VIA Facsimile: 816-559-2591 & E-Mail jpfaff01@sprintspectrum.com

Re: SprintPCSRequestforEmergencyAssignmentofthe310NXXCodeOutsidetheLottery Procedures

Dear Mr. Pfaff:

In response to your letter to Jack Leutza, Director Telecommunications Division, for *Emergency Assignment of a 310 NXX Code Outside the Lottery Procedures*, we request the following information so that we can respond. Please provide the following data as soon as possible so that we can better assess your need for telephone numbers.

- I. Specify the location of all tandem switches in the 310 NPA where Sprint PCS has NXX codes assigned.
2. Provide Sprint PCS' utilization data as of May 31, 2000 for all rate centers in 310 NPA. The format and definitions of the utilization data is attached. Also identify whether each NXX code (also known as a prefix) is associated with a tandem and/or the end office connection location (this information should be included in column T).
3. For the following rate centers that are within the local calling area of the Beverly Hills rate center and which are located in the 818 NPA (LA, No Hollywood, Van Nuys, Burbank DA, Burbank Sun Valley, Glendale, Reseda, San Fernando-Sepulveda) and the 213 NPA (LA DA 11, LA DA 12, LA DA 13, and LA DA 14), please provide Sprint PCS' utilization data as of May 31, 2000. The format and definitions of the utilization data is attached. Please identify whether each NXX code (also known as a prefix) is associated with a tandem and/or the end office connection location (this information should be included in column T).
4. Please provide a list of all affiliates of Sprint PCS.
5. Does Sprint PCS presently have any code sharing arrangement(s) with affiliates or any nonaffiliates? If yes, please explain the type of arrangement and list the names of any affiliate(s) and/or non-affiliate(s) with which Sprint PCS has such arrangements. If Sprint PCS does not have any code-sharing arrangement with any party, please state whether Sprint PCS has explored this option, and if not, please explain why.
6. Is the months-to-exhaust certification worksheet that Sprint PCS provided to the CPUC via fax dated May 25, 2000 only for the Beverly Hills rate center or is it an aggregate of all ratecenters in the 310 NPA? In either case, please provide the months-to-exhaust data for all rate centers in the 310 NPA.

7. It is the understanding of the CPUC staff that Sprint PCS and Cox California PCS, Inc. are the same entity. Please confirm whether or not that understanding is correct. In addition, please indicate whether the data Sprint PCS has provided on its utilization and forecast of numbers in the 310 NPA includes NXX codes held by Cox California PCS, Inc.

Send the above data to the Telecommunications Division attention Cherrie Conner. If you have any questions or concerns do not hesitate to contact me at (415) 703-2767.

Sincerely,

/s/ Risa Hernandez for Cherrie Conner
Cherrie A. Conner
Telecommunications Division

cc: J. Leutza
R. Hernandez
M. Mickiewicz

DEFINITIONS FOR UTILIZATION STUDY

Administrative: Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards. Subcategories used in the Utilization Studies are:

- **Internal Business Purpose/Official Numbers:** A number assigned by a service provider for its own internal business purposes
- **Test Numbers:** Telephone numbers (TNs) assigned for inter- and intra-network testing purposes
- **Other Administrative Numbers** (include only Location Routing Number, Temporary Local Directory Number and Wireless E911 ESRD/ESRK) where 0 **Identical to a Local Routing Number (LRN):** The ten-digit (NPA-XXX-XXXX) number assigned to a switch/point of interconnection (POI) used for routing in a permanent local number portability environment
- **Temporary Local Directory Number (TLDN):** A number dynamically assigned on a per call basis by the serving wireless service provider to a roaming subscriber for the purpose of incoming call setup
- **Wireless E-911 ESRD/ESRK:** A ten-digit number used for the purpose of routing an E911 call to the appropriate Public Service Answering Point (PSAP) when that call is originating from wireless equipment. The ESRD identifies the cell site and sector of the call origination in a wireless call scenario. The Emergency Services Routing Key (ESRK) uniquely identifies the call in a given cell site/sector and correlates data that is provided to a PSAP by different paths, such as the voice path and the Automatic Location Identification (ALI) data path. Both the ESRD and ESRK define a route to the proper PSAP. The ESRK alone, or the ESRD and/or Mobile Identification Number (MIN), is signaled to the PSAP where it can be used to retrieve from the ALI database, the mobile caller's call-back number, position and the emergency service agencies (e.g., police, **fire**, medical, etc.) associated with the caller's location. If a NANP telephone number is used as an ESRD or ESRK, this number cannot be assigned to a customer.
For convenience, "other administrative numbers" are reported as a group for purposes of the Utilization Study

Aging Numbers: Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 360 days. For purposes of the Utilization Study, carriers are to separately report aging numbers associated with residential service from those associated with business service.

Assigned Numbers: Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than **five** days shall not be classified as assigned numbers. For purposes of the Utilization Studies, numbers for non-working wireless and for interim number portability are to be considered as assigned numbers in Part I -Section A and separately identified in Part 2. See Interim Number Portability and Non-Working Wireless for definitions.

Available Numbers: Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.

COC Type: Three-digit element defining the use of the Central Office Code (codes such as OXX used for access tandem and testboard addressing or a "+" symbol that indicates direct routing to the designated switch in the NPA. 2XX-9XX values are considered NXXS.)

Allowable codes in the LERG Destination Code by LATA and Tandem Homing Arrangements (LERG 6/9) are:

ATC = Access Tandem Code (O/ I XX)

CDA = Customer Directory Assistance only (555 line numbers are assigned by the North American Numbering Plan Administration)

EOC = End Office Code

PLN = Planned Code - non-routable

PMC = Public Mobile Carrier (Type 2 Interconnected)

RCC = Radio Common Carrier (Dedicated Type I Interconnected)

SIC = Special 800 Service Code

SP I = Service Provider - Miscellaneous Service (Type I Interconnected)

SP2 = Service Provider - Miscellaneous Service (Type 2 Interconnected)

TST = Standard Plant Test Code

Allowable codes in the LERG Oddball file (LERG60DD only) are:

700 = 700 IntraLATA Presubscription

AIN = Advanced Intelligent Network

BLG = Billing Only

BRD = Broadband

CTV = Cable Television

ENP = Emergency Preparedness

FGB = Feature Group B Access

HVL = High Volume

INP = Information Provider

LTC = Local Test Code

NII = NII Code

ONA = Open Network Architecture

PRO = Protected

RSV = Reserved

RTG = Routing Only

UFA = Unavailable for Assignment

Interim Number Portability (INP): The interim ability to move telephone service from one service provider to another service provider using Remote Call Forwarding (RCF), Direct Inward Dialing (DID), or equivalent means where:

Remote Call Forwarding allows a customer to have a local telephone number in a @istant location. Every time someone calls that number, that call is forwarded to the RCF customer in the distant location. Remote call forwarding is similar to call forwarding on a residential line, except that the RCF customer has no phone, no office and no physical presence in that location.

A DID (Direct Inward Dial) trunk is a trunk from the Central office which passes the last two to four digits of the Listed Directory Number into the PBX, thus allowing the PBX to switch the call to and thus ring the correct extension" without the use of an attendant (Newton's Telecom Dictionary). Existing DID retail service is limited to PBX services. For purposes of providing INP, Pacific and GTEC will use the DID switch functionality to provide INP to any CLC customer regardless of the type of terminal equipment used on the customers' premises.

For the purposes of the Utilization Study, each carrier must report the quantity of its assigned numbers that are dedicated to providing INP under Assigned Numbers in Part I-Section A and separately identified in Part 2.

Intermediate Numbers: Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers. For Type I donor carriers, Type I numbers are to be reported as intermediate numbers in Part I-Section A and detailed information is to be provided in Part 2 for the

Utilization Studies. For Type I recipient donors, Type I numbers shall be reported in the Part I -Section B for the Utilization Studies. For definition, see Type I numbers.

Local Number Portability: The ability to move a telephone number from one service provider to another service provider using LRN-LNP technology

Non-Working Wireless: this category is for wireless companies only to report numbers that they have already assigned to customer equipment, but are not yet working. For example, cellular carriers often prepackage a cellular telephone with an assigned telephone number for sale to customers. Those phone numbers are assigned, but are not actually activated until after the customer purchase is made. For the purposes of the Utilization Study, each carrier must report the quantity of its non-working wireless numbers under Assigned Numbers in Part I-Section A and separately identified in Part 2.

OCN: Operating Company Number (OCN) assignments must uniquely identify the applicant. Relative to CO Code assignments, NECA-assigned Company Codes may be used as OCN'S. Companies with no prior CO Code or Company Code assignments should contact NECA (973-884-8355) to be assigned a Company Code(s). Since multiple OCNs and/or Company codes may be associated with a given company, companies with prior assignments should direct questions regarding appropriate OCN usage to the Traffic Routing Administration (TRA) on 732-699-6700

Reserved Numbers: Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 45 days shall not be classified as reserved numbers.

Special Use NXX Codes: Certain NXX codes have traditionally been reserved or designated for special uses, and have not been available for assignment by carriers for general commercial use in providing telephone numbers to customers. These NY-X prefixes are restricted to such special uses as recorded public information announcements of time-of-day and weather forecasts, high-volume call-in numbers, and emergency access numbers used by the Federal Emergency Management Administration (FEMA), etc.

Type 1 Numbers: numbers pursuant to a Type I interconnection agreement. The Type 1 interconnection is a connection between a mobile/wireless service provider and an end office of another service provider for the purpose of originating and terminating traffic or for access to end user services (i.e. DA, Operator services, 911, etc). The interconnection consists of a facility between the mobile/wireless service provider and the end office, switch usage, and telephone numbers (only required if the mobile carrier wishes to receive originating (UM) traffic). For the purposes of the 310 Utilization Study, both mobile/wireless service providers who have received Type I numbers and those service providers who have provided Type I numbers to mobile/wireless service providers are asked to report on those numbers at the 1000 block level.

(END OF APPENDIX A

APPENDIX B

June 6, 2000 Reply Letter by Sprint PCS
Regarding the June 2, 2000 Data Request

Joseph R. Assenzo

General Attorney

Sprint PCS

Legal Department

900 Main, 12th Floor

Kansas City, Missouri 64112

Telephone: 816 559 2514

F= 816 559 2591

Internet

jassen01@sprintspectrum.com

June 6, 2000

Via Facsimile (415) 703-4405

Mr. John M. Leutza
Director - Telecommunications Division
California Public Utilities Commission
505 Van Ness Avenue, Third Floor
San Francisco, CA 94102-3298

**Re: PCS Request for Emergency Assignment of 310-NXX Code Outside
the Lottery Procedures**

Dear Mr. Leutza:

Sprint PCS received the Telecommunications Division's June 2, 2000 information requests. We are preparing responses and expect to have them to you shortly. However, the Division's failure to act timely on Sprint PCS' request for emergency assignment of a 310-NXX code outside the lottery procedures insures that Sprint PCS will exhaust its existing number supply in the Beverly Hills rate center.

Sprint PCS filed its first application for emergency relief over a month ago. Sprint PCS was within approximately three months to exhaust when it submitted its original petition for emergency relief to the Commission on May 5, 2000. Sprint PCS withdrew its petition after you informed us on May 15, 2000 that the Commission would not entertain the petition any earlier than June 22, 2000. The Commission's General counsel, who was also on the May 15 conference call, recommended that Sprint PCS re-submit its request as a letter to you as a way to get a quicker decision on its need for a code. Sprint PCS submitted such a letter request on May 18, 2000, again explaining that time is of the essence and asking for a decision by May 31, 2000. Sprint PCS provided the Division with an affidavit stating that Sprint PCS would exhaust on August 4, 2000, and supplied a supporting forecast. In addition, Sprint PCS provided its April Months-to-Exhaust Work-sheet.

Actual number assignments over the last month have been consistent with the forecast Sprint PCS submitted over a month ago, and Sprint PCS is now within about two months to exhaust, as expected. The time needed to activate an NXX code is 66 days, as the Division is well aware. Even if that time period can be shortened somewhat, Sprint PCS needs a few days to test the code. On Friday June-2, 2000, at about 6 p.m. CST, the Division faxed Sprint PCS a lengthy request for information, instead of acting on Sprint

W---D 07:10 FkX

Mr. John M - Leutza

June 6, 2000

Page 2

PCS' request for emergency relief. Sprint PCS will provide the requested information by June 9, 2000. (Normally, the Commission allows carriers a month to provide utilization information.) Even if the Division acts within a week or 10 days after receiving the requested information, Sprint PCS will then be within about six weeks to exhaust. The Division's lack of action is effectively a denial of Sprint PCS' request for emergency relief.

The information the Telecommunications Division requested on June 2, 2000 does -not have any bearing on Sprint PCS' request for emergency relief' the Beverly Hills rate center. The data requests suggest that Sprint PCS could use numbers rated in other 310 NPA rate centers, and even in other 818 and 213 NPA rate centers, to meet demand in Beverly hills. 'This is not the case, as Sprint PCS explained in its May 18, 2000 letter and in subsequent conversations. The fact is that wireless customers find unacceptable the idea that many friends and family will incur LEC toll charges in calling the mobile handset. If LEC customers have a right to make local calls in another LEC customer, they should have the right to make local calls in calling a mobile customer. In addition, using NXX codes from other area codes will lead to disparated dialing and customer confusion on calls to and -from Sprint PCS customers.

The issue is not just fairness relative to land-to-land traffic; the issue strikes at the heart of competitive -neutrality among, wireless carriers. Sprint PCS' competitors such as AT&T Wireless and PacBell Mobile have numbers rated in the Beverly Hills rate center (with AT&T having nine codes compared to Sprint PCS' three codes). If a Beverly Hills resident wants a Beverly Hills mobile number and if Sprint PCS cannot meet this request, the resident will simply turn to the services of one of Sprint PCS' competitors. I think you would agree that a consumer's choice of service provider should not be influenced because one service provider does not have the right number to assign to the consumer.

Mr. John M. Leutza
June 6, 2000
Page 2

The June 2 information requests also ask about code sharing. Wireless carriers like Sprint PCS cannot share codes. Sprint PCS would lose switch-based intelligent features and may lose the ability to roam. Code sharing has been exhaustively studied in industry numbering forums and commented on in FCC and state number conservation dockets, and there was general consensus that such sharing is not a practical conservation measure.

Sincerely,

/s/ Joseph Assenzo

cc: Ms. Cherrie A. Conner
(Via Fax: 415/703-2767)

(END OF APPENDIX B)

APPENDIX C

June 14, 2000 Supplemental
Telecommunications Division Staff Data Request

STATE OF CALIFORNIA

GRAY DAVIS, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 14, 2000

Mr. Jeffrey M. Pfaff
Sprint PCS
4900 Main, 11th Floor
Kansas City, MO 64112

VIA Facsimile: 816-559-2591 & E-Mail jpfaff01@sprintspectrum.com

Re: Sprint PCS Request for Emergency Assignment of the 310 NXX Code Outside the Lottery Procedures

Dear Mr. Pfaff:

Please provide the following additional data as soon as possible so that we can better assess your need for telephone numbers.

1. For the following rate centers that are within the local calling area of the Beverly Hills rate center and which are located in the 818 NPA (North Hollywood, Van Nuys, Burbank: Burbank DA, Burbank Sun Valley DA, Glendale, Reseda, San Fernando-Sepulveda DA); the 213 NPA (LA DA 1, LA DA 7, and LA DA 10); and the 323 NPA (LA DA 2, LA DA 3, LA DA 4, LA DA 5, LA DA 6, LA DA 8, LA DA 9, LA DA 11, LA DA 12, and LA DA 14), please provide Sprint PCS' utilization data as of May 31, 2000. The format and definitions of the utilization data is attached. Please identify whether each NXX code (also known as a prefix) is associated with a tandem and/or the end office connection location (this information should be included in column T).
2. In the information Sprint provided to the CPUC staff on June 9, 2000, there is an apparent anomaly in the data provided. Sprint lists two NXX codes (693 and 694) as located in the 818 NPA in the LSAN DA 01 Rate Center. Staff has confirmed that this is also how the codes are listed in the LERG. Our records do not indicate there is any LSAN DA 01 Rate Center in the 818 NPA; there is, however, a LSAN DA 01 Rate Center in the 213 NPA. Please explain how a rate center in the 213 NPA can be in a non-contiguous and separate area code.

Send the above data to the Telecommunications Division attention Cherrie Conner. If you have any questions or concerns do not hesitate to contact me at (415) 703-2767.

Sincerely,

/s/ Mary Jo Borak for Cherrie Conner
Cherrie A. Conner
Telecommunications Division

cc: J. Leutza
R. Hernandez
M. Mickiewicz

APPENDIX D

Cover Letter of Sprint PCS in Response to Independent
Inquiry of Telecommunications Division Director of June 13, 2000
(providing confidential data regarding the Culver City Rate Center)

07/18/2000 TUE 12:15

FAX

001/012

Jeffrey M. Pfaff
Legal Department
Attorney

Sprint PCs
4900 Main, 11th Floor
Kansas City, MO 64112
Voice 816 559 1912
Fax 816 559 2591

Via facsimile (415.703.4405) and regular mail

California Public Utilities Commission
Telecommunications Division
505 Van Ness Avenue, 3rd Floor
San Francisco, CA 94102

ATTN: Bishu Chatterjee

Dear Sirs;

Enclosed please find the additional utilization information sought by the CPUC by Jack Leutza in his correspondence dated June 13, 2000.

This information is highly proprietary and confidential. Sprint PCS provides this information with the understanding that it will be handled subject to confidential treatment. If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ Jeffrey M. Pfaff

cc: Scott Ludwikowski